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2009 NOV 24 A 9: 32

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 6161

DATE COMPLAINT FILED: January 21, 2009

LAST RESPONSE RECEIVED: February 24, 2009

DATE ACTIVATED: May 6, 2009

EXPIRATION OF STATUTE OF LIMITATIONS:  
October 2, 2013 / November 3, 2013

COMPLAINANT:

Hocking County Board of Elections

RESPONDENT:

Hocking County Republican Party Central  
Committee

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 431(4)(C)

2 U.S.C. § 433(a)

2 U.S.C. § 434(a)

11 C.F.R. § 100.5(c)

11 C.F.R. § 102.1(d)

11 C.F.R. § 104.1(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

The complaint alleges that "[o]n two or more occasions the Hocking County Republican Party Central Committee ("HCRPCC")<sup>1</sup> violated Federal and/or State Election Laws by placing ads for Federal Candidates in the Logan Daily News. These two occasions being October 2, 2008 and October 28, 2008. It is against FEC regulations for a local party to pay for advertising

<sup>1</sup> The complaint referred to the entity as the "Hocking County Republican Party," and the response clarified the official name of the organization. We refer to the committee as the HCRPCC throughout this report.

1 for Federal Candidates.”<sup>2</sup> Complaint at 1. There are no other allegations, although the complaint  
2 notes that the HCRPCC made a \$1,000 contribution to a federal candidate.

3 HCRPCC's response states that it “is the official county organization for the Republican  
4 Party in Hocking County . . . created by operation of Ohio law.” HCRPCC Response at 1. The  
5 HCRPCC admits to making the \$1,000 contribution to a federal candidate and paying for the  
6 advertisements, and states that they “were not in excess of any federal limits, nor illegal in and of  
7 themselves.” *Id.* at 2. It also states that the federal candidates' campaigns did not approve the  
8 advertisements, consent or participate in the placement of the advertisements, nor were they  
9 consulted in any way concerning them. The HCRPCC states that it arguably and inadvertently  
10 may have exceeded the registration and reporting threshold by contributing \$1,000 to a federal  
11 candidate and then paying for advertisements featuring that same candidate.

12 Although the complaint lacks specificity as to which provisions of the Act or regulations  
13 were allegedly violated, based on the information in it concerning the HCRPCC's \$1,000  
14 contribution to one of the federal candidates featured in the advertisements, it appears the  
15 complaint may be alleging that the HCRPCC exceeded the \$1,000 threshold for contributions  
16 without registering as a political committee or filing reports with the Commission because it  
17 made a \$1,000 contribution to a candidate for federal office and paid for two newspaper  
18 advertisements featuring that candidate and two other federal candidates. *See* 2 U.S.C.  
19 §§ 431(4)(C), 433, 434; 11 C.F.R. §§ 100.5(c), 102.1(d), 104.1(a) (statutes and regulations  
20 defining a local committee of a political party as a “political committee” if it makes more than

---

<sup>2</sup> While this statement is facially inaccurate in that local party committees may make disbursements for communications featuring Federal candidates subject to certain restrictions, when taken in context with the rest of the complaint as discussed *infra*, the complaint appears to be referring to the requirement that an *unregistered* local committee of a political party not exceed the contribution and expenditure thresholds set forth in 11 C.F.R. § 100.5 without registering and filing reports with the Commission as set forth in 11 C.F.R. §§ 102.1(d) and 104.1(a).

1 \$1,000 in contributions or expenditures in a calendar year and requiring local parties meeting the  
2 definition of "political committees" to register and file reports with the Commission).

3 As discussed below, based on the available information, it does not appear that the  
4 HCRPCC exceeded any of the applicable threshold amounts requiring registration and reporting  
5 as a political committee pursuant to 2 U.S.C. §§ 433 and 434. Therefore, we recommend that the  
6 Commission find no reason to believe that the HCRPCC violated 2 U.S.C. §§ 433 and 434, and  
7 close the file.

8 **II. FACTUAL SUMMARY**

9 The complaint from the Hocking County Board of Elections ("HCBE") is based on a  
10 handwritten complaint that an individual read at an HCBE meeting, and which she asked the  
11 HCBE to report to the Commission. The handwritten complaint, which is attached to the  
12 HCBE's complaint, states in pertinent part, "[o]n two or more occasions the [HCRPCC] violated  
13 Federal and or State Election Laws by placing ads for Federal Candidates in the Logan Daily  
14 News. These two occasions being October 2, 2008 and October 28, 2008. It is against FEC  
15 regulations for a local party to pay for advertising for Federal Candidates." Complaint at 1. The  
16 complaint states that the HCBE reviewed the HCRPCC's campaign finance reports, and found  
17 "the Republican Party had given a donation of \$1,000 to Fred Dailey, candidate to Congress (18<sup>th</sup>  
18 Congressional)." *Id.* The HCBE states it then voted to send this information to the Commission.  
19 The HCBE attached a copy of a page from an HCRPCC state campaign finance report showing  
20 that the HCRPCC contributed \$1,000 to the Dailey for Congress Committee on June 23, 2008.

21 Along with its response as described in the Introduction, the HCRPCC attached copies of  
22 the advertisements in question and an affidavit from an employee of the Logan Daily News with  
23 supervisory duties concerning billing and accounts, attesting to the costs of the advertisements

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1 and the dates they ran. According to these attachments, the first advertisement ("First Ad") ran  
2 on October 2, 2008, features the names and photographs of federal candidates John McCain,  
3 Sarah Palin and Fred Dailey, and states, "LEADERSHIP we need in Washington."  
4 (Capitalization in the original).<sup>3</sup> See Attachment 1. The cost of the First Ad was \$75, as  
5 evidenced by the response and the attached affidavit.

6 The second advertisement ("Second Ad") ran on October 31 and November 3, 2008, and  
7 names John McCain, Sarah Palin, Congressional candidate Fred Dailey, and ten local and state  
8 candidates at the top, includes the wording "VOTE" (capitalization in the original) twice, "Please  
9 take this sample ballot with you to the polls on Tuesday, November 4, 2008 And Vote for These  
10 Candidates For Ohio and Hocking County" at the top, and "VOTE NOVEMBER 4th!"  
11 (capitalization in the original) at the bottom.<sup>4</sup> See Attachment 2. The total cost of the Second Ad  
12 was \$216.75 for each of the two days it was run, for a total of \$433.50, according to the affidavit.  
13 If we allocate the cost of the Second Ad on a time-space basis, the disbursement for the federal

---

<sup>3</sup> The HCRPCC's response refers to the advertisements as "slate cards." Under the Commission's regulations, the slate card exemption does not apply to candidate lists that appear in a newspaper. See 11 C.F.R. § 100.80 (stating that the slate card exemption does not apply to the costs of "the preparation and display of listings made on broadcast stations, or in newspapers, magazines, and similar types of general public political advertising"). Therefore, regardless of how the advertisements are characterized, they do not constitute exempt activity.

<sup>4</sup> The complaint and response differ slightly on when the Second Ad ran, but we have relied on the affidavit from the newspaper employee on this point.

1 portion of the advertisement was \$72.25 (\$36.13 for each time it ran).<sup>5</sup> *See generally* 11 C.F.R.  
2 § 106.1(a)(1), (c)(3). Added to the cost of the First Ad, the total amount spent by the HCRPCC  
3 for federal candidates in both advertisements was \$147.25.

4 **III. LEGAL ANALYSIS**

5 The HCRPCC meets the definition of a "local committee of a political party" because it  
6 appears to be an "organization that by virtue of the by-laws of a political party or the operation of  
7 State law is part of the official party structure, and is responsible for the day-to-day operation of  
8 the political party at the level of city, county, neighborhood, ward, district, precinct, or any other  
9 subdivision of a State." 11 C.F.R. § 100.14(b); *see* HCRPCC Response at 1 (the HCRPCC states  
10 that it is part of the official structure of the Ohio Republican Party). Any local committee of a  
11 political party which "makes contributions aggregating in excess of \$1,000 during a calendar  
12 year" or "makes expenditures aggregating in excess of \$1,000 during a calendar year" meets the  
13 threshold definition for a political committee. 2 U.S.C. § 431(4)(C); 11 C.F.R. §§ 100.5(c),  
14 100.14(b). Political committees must file a Statement of Organization with the Commission  
15 within 10 days of meeting the threshold definition found in 2 U.S.C. § 431(4)(C) and 11 C.F.R.  
16 § 100.5(c), and must thereafter file reports that comply with 2 U.S.C. § 434. 2 U.S.C. §§ 433(a),  
17 434(a)(1); *see* 11 C.F.R. §§ 102.1(d), 104.1(a).

<sup>5</sup> The advertisement includes twelve blocks of equal size that contain candidate names. *See* Attachment 2. John McCain and Sarah Palin appeared in one of the twelve blocks together and Fred Dailey appeared in another. The remaining ten blocks contained the names of state and local candidates. There is also a portion at the top of the advertisement and one at the bottom which contain no candidate names. The federal allocation amount is calculated by dividing the cost of one printing of the Second Ad (\$216.75) by the twelve blocks (\$18.06), multiplying by the two blocks containing federal candidates (\$36.13), and multiplying by the two times the advertisement ran, to arrive at a total federal portion of \$72.25. In its response, HCRPCC asserts that the federal allocated portion of the Second Ad was \$25.50 for the portion dedicated to Fred Dailey (\$12.75 for each time it ran) and \$25.50 for the portion dedicated to McCain/Palin (\$12.75 for each time it ran) for a total amount of \$51.00. However, this calculation fails to take into account the proportional federal share of the sections of the advertisement that were dedicated to no particular candidate and, therefore, needed to be divided and apportioned out among all of the listed candidates.

1           The HCRPCC made a \$1,000 contribution to the Dailey Committee on June 23, 2008,  
2   and, therefore, any other contributions to federal candidates or committees during 2008 would  
3   have put it over the registration and reporting contribution threshold because the Dailey  
4   contribution is at, but is not "in excess of," the contribution threshold. 2 U.S.C. § 431(4)(C);  
5   11 C.F.R. § 100.5(c). Because there is no allegation or other information suggesting that the  
6   advertisements were "made in cooperation, consultation or concert with, or at the request or  
7   suggestion of," a candidate, a candidate's authorized committee, or their agents, the costs of the  
8   advertisements are not in-kind contributions. 11 C.F.R. §§ 109.20, 109.21(b) (if coordinated, the  
9   advertisements would constitute in-kind contributions); *see* HCRPCC Response at 2. Further,  
10   even if the disbursements for the advertisements were expenditures, it appears that the costs  
11   would fall well below the \$1,000 expenditure threshold. 2 U.S.C. § 431(4)(C); 11 C.F.R.  
12   §100.5(c).

13           Accordingly, we recommend that the Commission find no reason to believe that the  
14   Hocking County Republican Central Committee violated 2 U.S.C. §§ 433 and 434, and close the  
15   file.

16   **IV.   RECOMMENDATIONS**

- 17           1.   Find no reason to believe that the Hocking County Republican Party Central  
18               Committee violated 2 U.S.C. §§ 433 and 434.  
19  
20           2.   Approve the attached Factual and Legal Analysis.  
21  
22           3.   Approve the appropriate letters.

MUR 6161 (HCRPCC)  
First General Counsel's Report

4. Close the file.

Thomasenia P. Duncan  
General Counsel

11-23-09  
Date

BY: Kathleen Guith  
Kathleen Guith  
Deputy Associate General Counsel  
for Enforcement

Susan L. Lebeaux by K.G.  
Susan L. Lebeaux  
Assistant General Counsel

J. Cameron Thurber  
J. Cameron Thurber  
Attorney

Attachments:

1. First Ad
2. Second Ad
3. Factual and Legal Analysis

hall, Logan-Horns Mill Road.

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### WE SUPPORT OUR TROOPS

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U.S. A

82nd Airborne Division Command Sgt. Maj. Thomas  
Capel, XVIII Abn. Corps Commander Lt. Gen. Lloyd  
Austin II, and 82nd Abn. Div. Commanding General

Maj. G  
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## Scaparrotti assum

### Becomes 45th commanding general of 82nd Airborne Division

By SGT. TIMOTHY DINNEEN  
For the Logan Daily News

FORT BRAGG, N.C. — The command, "sound adjutant's call" signaled the commencement of the 82nd Airborne Division's assumption of command ceremony Wednesday as more than 8,000 paratroopers descended upon Pike Field to be introduced and reviewed by their new commanding general.

Maj. Gen. Curtis M. "Mike" Scaparrotti, 52, from Logan received the 82nd Abn. Div.'s colors symbolizing a transferring of authority from old leadership to new, becoming the 45th commanding general in the division's long

and fabled history.

"Since the activation of 1 Airborne Division, you (par ers) and your predecessors established a reputation for lence, for toughness and for ty in combat that is recogn around the world," said Scaparrotti. "Those who we 'Double A' patch are respect our allies and feared by our mias"

Scaparrotti said the nu one challenge he faces as t commanding general is tal care of troopers and their l He also mentioned plans a be executed immediately a ing the future of the divisi

"The future of the divi to reset, take care of soldie their families, be well trair get ready to go for the next deployment," Scaparrotti s

Scaparrotti is no strang the division he now commi began his Army career her platoon leader in 3rd Batt

PUT YOUR BUSINESS OUT IN FRONT WITH A PAGE ONE AD IN THE LOGAN D



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pumpkin creations,  
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 Every budding  
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 lantern has to be  
 scent of Ireland's  
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date would be a good move  
 economically for people of  
 southeast Ohio.

"We want middle class tax  
 breaks with Barack Obama,  
 instead of tax breaks for the  
 wealthy," Brown added,  
 "Barack is steady, calm and  
 ready to lead."

Following his introduction  
 in Logan, Gov. Ted Strickland  
 related the rumors surround-  
 ing Obama to whisperings  
 that followed the campaign of  
 Pres. John F. Kennedy.

"In 1960, there was a  
 young senator running for  
 president. People said he was  
 too young, too inexperienced.  
 And, the people whispered  
 about him. You know what  
 they whispered about him?  
 He's Catholic. We've never

served first as a fighter pilot  
 in the United States Marines  
 Corps, became an astronaut  
 — being the first American to  
 orbit the Earth — became a  
 senator and then returned to  
 being an astronaut.

"I've not even been an  
 astronaut one time, and he's  
 been one twice," Strickland  
 said.

The audience at Hocking

than losing their home, as  
 was a possibility.

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EXHIBIT

B



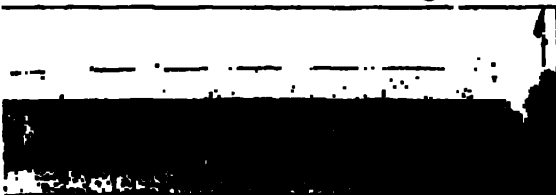
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| Please take this sample ballot with you to the polls on<br>Tuesday, November 4, 2008<br>And Vote For These Candidates For<br>Ohio and Hocking County |  |
|--|--|
| <b>X</b>   | <b>FOR PRESIDENT: JOHN MCCAIN</b><br><b>FOR VICE-PRESIDENT: SARAH PALIN</b><br>Republican  |
| <b>X</b>   | <b>FOR ATTORNEY GENERAL:</b><br><b>MIKE CRITES</b><br>Republican                           |
| <b>X</b>   | <b>FOR COUNTY TREASURER:</b><br><b>STEVE SHATZ</b><br>Republican                           |
| <b>X</b>   | <b>FOR REPRESENTATIVE TO CONGRESS:</b><br><b>FRED DAILEY</b><br>Republican                 |
| <b>X</b>   | <b>FOR CORONER:</b><br><b>JOHN D. DE WALT</b><br>Hocking County Republican                 |
| <b>X</b>   | <b>FOR STATE REPRESENTATIVE:</b><br><b>BILL HAYES</b><br>Republican                        |
| <b>X</b>   | <b>FOR COUNTY COMMISSIONER:</b><br><b>CAROL MACKEY</b><br>Republican                       |
| <b>X</b>   | <b>FOR COUNTY COMMISSIONER:</b><br><b>CLARK SHEETS JR.</b><br>Republican                   |
| <b>X</b>   | <b>FOR PROSECUTING ATTORNEY:</b><br><b>PAULINE E. O'NEILL</b><br>Hocking County Republican |
| <b>X</b>   | <b>FOR SHERIFF:</b><br><b>LANNY NORTH</b><br>Hocking County Republican                     |
| <b>X</b>   | <b>FOR FOR JUSTICE OF THE SUPREME COURT:</b><br><b>MAUREEN O'CONNER</b>                    |
| <b>X</b>   | <b>FOR FOR JUSTICE OF THE SUPREME COURT:</b><br><b>EVELYN L. STRATTON</b>                  |
| <b>VOTE NOVEMBER 4<sup>TH</sup>!</b>   |  |
| Filed by Hocking County Republican Party, Buckeye Club,<br>Columbus, 245 S. Holladay St., Logan, OH 43130  |  |

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